

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**KESTREL HOLDINGS I, L.L.C.,**

**Plaintiff,**

**v.**

**LEARJET INC. and BOMARDIER INC.,**

**Defendants.**

**CIVIL ACTION**

**No. 02-2388-CM**

**MEMORANDUM AND ORDER**

This matter comes before the court on defendants' joint Motion to Alter or Amend Judgment (Doc. 303), defendants' joint Motion to Sever Claims (Doc. 304), and plaintiff's Motion for Leave to File Surreply in Opposition to Defendants' Motions to Alter or Amend Judgment and to Sever Claims (Doc. 308).

**I. Background**

On March 10, 2005, the court entered an Order granting summary judgment in favor of defendants. The court found that it lacked subject matter jurisdiction over the parties' claims as a result of the filing of a ratification, pursuant to Fed. R. Civ. P. 17, by NorLease, a real party in interest to the case who was not originally named as a party in the case. Specifically, the court found that NorLease's ratification required the court to consider NorLease's citizenship from the initial filing in the case, which destroyed the diversity of citizenship among the parties. Because of the dispositive nature of that issue, the court declined to address defendants' other arguments in favor of summary judgment.

Defendants subsequently filed the instant motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e) and 60 and a motion to sever claims. Defendants contend that the court properly found that it lacked subject matter jurisdiction over the claims that would involve return of the aircraft at issue to Learjet. However, defendants contend that, under Kansas law, NorLease's participation is required only on the claims which seek to "undo" the deal between the parties (namely the claims for rescission, cancellation and revocation of acceptance encompassed in Count I). Defendants contend that, for all of the remaining claims, NorLease's participation is not required by Kansas law or federal procedure. Accordingly, defendants have requested that the court, pursuant to Fed. R. Civ. P. 21, amend the March 10, 2005 Order to sever the rescission, cancellation and revocation of acceptance claims, dismiss them for lack of subject matter jurisdiction, and reinstate the other remaining claims in the case.

In support of their position, defendants question whether the court considered applying Rule 21 when it made the March 10, 2005 ruling. Defendants contend that it would be a waste of time to re-litigate, in another court, claims on which the court made prior dispositive rulings and which were properly brought in federal court. Defendants further contend that the filing of the NorLease ratification and the court's subsequent dismissal of the suit were unnecessarily prejudicial to defendants. Defendants contend that, in light of the two years already spent on the litigation in this court prior to the filing of the ratification, and the closeness of the trial date when the court made its summary judgment ruling, the most equitable and efficient use of resources suggest that the court retain the remaining claims to which NorLease is not a necessary party.

Plaintiff contends that, under Rule 17, the court properly considered NorLease's citizenship from the initial filing of the complaint, and must either dismiss all or none of the claims for lack of

subject matter jurisdiction. Plaintiff also contends that NorLease is a dispensable real party in interest for all of the claims, not just for the breach of contract claims encompassed in Count I; thus plaintiff contends that all of the claims require the same jurisdictional treatment. Plaintiff further contends that the claims which defendants seeks to sever are “inextricably intertwined” with the rest of the litigation. Finally, plaintiff contends that severance is inappropriate because it would be inconvenient for the parties and judicially inefficient. Notably, following the court’s March 10, 2005 Order, plaintiff re-filed the entire case in Kansas state court.

## **II. Standard**

Pursuant to Local Rule 7.3, “[m]otions seeking reconsideration of dispositive orders or judgment must be filed pursuant to Fed. R. Civ. P. 59(e) or 60.” D. Kan. Rule 7.3(a). Motions for reconsideration “filed within ten days of the district court’s entry of judgment . . . [are] treated as a motion to alter or amend the judgment under Fed. R. Civ. P. 59(e).” *Hatfield v. Bd. of County Comm’rs for Converse County*, 52 F.3d 858, 861 (10<sup>th</sup> Cir. 1995). Because defendants’ motion to alter or amend was filed exactly ten business days after the court entered its order and judgment dismissing this case, the court examines defendants’ motion under Fed. R. Civ. P. 59(e).

Whether to grant or deny a motion for reconsideration is committed to the court’s discretion. *Brown v. Presbyterian Healthcare Servs.*, 101 F.3d 1324, 1332 (10<sup>th</sup> Cir. 1996); *Hancock v. City of Okla. City*, 857 F.2d 1394, 1395 (10<sup>th</sup> Cir. 1988). In exercising that discretion, courts have recognized three major grounds justifying reconsideration: (1) an intervening change in controlling law; (2) availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice. *See Major v. Benton*, 647 F.2d 110, 112 (10<sup>th</sup> Cir. 1981); *Burnett v. W. Res., Inc.*, 929 F. Supp. 1349, 1360 (D. Kan. 1996); *Marx v. Schnuck Mkts., Inc.*, 869 F. Supp. 895, 897 (D. Kan. 1994).

Appropriate circumstances for a motion to reconsider are where the court has obviously misapprehended a party's position or the facts or the law, or the court has mistakenly decided issues outside of those the parties presented for determination. A party's failure to present its strongest case in the first instance does not entitle it to a second chance in the form of a motion to reconsider.

*Burnett*, 929 F. Supp. at 1360 (citing *Anderson v. United Auto Workers*, 738 F. Supp. 441, 442 (D. Kan. 1990); *Renfro v. City of Emporia, Kan.*, 732 F. Supp. 1116, 1117 (D. Kan. 1990)). Moreover, "[a] motion to reconsider is not a second chance for the losing party to make his strongest case or to dress up arguments that previously failed." *Flake v. Hoskins*, 55 F. Supp. 2d 1196, 1203-04 (D. Kan. 1999).

### **III. Analysis**

#### **A. Plaintiff's Surreply**

As an initial matter, upon analyzing defendants' motion to alter or amend judgment and motion to sever claims, the court has concluded that the information contained in plaintiff's proposed surreply is immaterial to the issues before the court. Accordingly, the court denies plaintiff's Motion for Leave to File Surreply (Doc. 308) and has not considered the information contained in plaintiff's proposed surreply in making its ruling on the motions to alter the judgment or on the motion to sever claims.

#### **B. Motion to Alter or Amend and Motion to Sever Claims**

In this case, the only ground for reconsideration that potentially applies to defendants' arguments is the need to correct clear error or prevent manifest injustice. Defendants have identified no intervening change in controlling law or the availability of new evidence since the court entered its March 10, 2005 Order. Having reviewed the record, the court stands by its prior ruling on the Rule 17 issue, including the holding that this court has no subject matter jurisdiction over any of the claims.

With regard to defendants' request that the court apply Fed. R. Civ. P. 21 to sever some of the claims and retain jurisdiction over others, despite the court's prior ruling that it has no jurisdiction over any of the claims because of the effect of Rule 17, the court finds defendants' arguments unpersuasive.

Rule 21 of the Federal Rules of Civil Procedure allows district courts to sever any claim against a party and proceed with the claim or claims separately. This broad power stems from the last sentence of Rule 21, which specifically states that "[a]ny claim against a party may be severed and proceeded with separately." Fed. R. Civ. P. 21. Whether to sever claims under Rule 21 is within the court's discretion. *K-B Trucking Co. v. Riss Int'l Corp.*, 763 F.2d 1148, 1153 (10<sup>th</sup> Cir. 1985). Rule 21 applies when the claims asserted do not arise out of the same transaction or occurrence or do not present some common question of law or fact. *See Am. Fid. Fire Ins. Co. v. Construcciones Werl, Inc.*, 407 F. Supp. 164, 190 (D.V.I. 1975). Under Rule 21, the court can also sever unrelated claims and afford them separate treatment when to do so would be in the interest of some of the parties. *Id.*

Courts may order a Rule 21 severance when it will serve the ends of justice and further the prompt and efficient disposition of litigation. "When determining whether severance is appropriate under Rule 21, the court considers the convenience of the parties, avoiding prejudice, promoting expedition and economy, and the separability of law and logic." *Old Colony Ventures I, Inc. v. SMWNPF Holdings, Inc.*, 918 F. Supp. 343, 350 (D. Kan. 1996) (citing *Sutton Hill Assocs. v. Landes*, 1988 WL 56710, at \*2 (S.D.N.Y. May 25, 1988) and *Spencer, White & Prentiss Inc. v. Pfizer Inc.*, 498 F.2d 358, 362 (2d Cir. 1974)).

However, the court will not sever claims where the issues are "inextricably intertwined with the remainder of the action." *Old Colony*, 918 F. Supp. at 350. When counterclaims are based on an

entirely different factual situation from that underlying plaintiff's claim, they are readily severable. *T.S.I 27, Inc. v. Berman Enter. Inc.*, 115 F.R.D. 252, 254 (S.D.N.Y. 1987) (citations omitted).

After reviewing the pleadings and the arguments of both parties on this issue, the court concludes that plaintiff's claims involve central questions of law and fact that are also at issue in defendant Learjet's counterclaims. Specifically, this lawsuit arises out of plaintiff's purchase of a Learjet Model 60 aircraft from defendants. Plaintiff's claims against defendants include breach of contract (rescission and/or revocation of acceptance), breach of the implied warranty of merchantability, and breach of an implied warranty of fitness for a particular purpose, arising out of the sale of the aircraft and subsequent problems with the aircraft. Plaintiff contends that it is entitled to an order requiring defendants to take the aircraft back and to pay plaintiff more than \$15 million in damages. Plaintiff's claimed damages include purchase price payments and interest, costs for flights to and from the repair center, a financing prepay penalty, acquisition costs, hangar rent, administrative fees, and costs for crew service, insurance, repair labor, third-party labor, and pilot safety training. Learjet's counterclaims against plaintiff are for breach of contract and quantum meruit. Learjet contends that it performed repairs or service work, and/or provided fuel and/or other benefits to the aircraft for plaintiff that were not covered by the warranty agreement, totaling more than \$21,000, plus interest. Learjet further claims that plaintiff owes more than \$97,000, plus interest, for 81.2 hours of interim flight support provided by Learjet to plaintiff pursuant to a written agreement.

Thus, all of these claims arise from plaintiff's purchase of the Model 60 aircraft and the subsequent problems and disputes between the parties regarding the aircraft and the interpretation of the written agreements between them. In this case, where all of the claims and counterclaims are so intertwined, they should be adjudicated in one action and severance of some of the claims is not

warranted pursuant to Rule 21. To permit separate litigation of some of the claims in federal court and some in state court would be inefficient and wasteful for all of the parties. Moreover, because of the common nature of the claims, severing some of the claims would require the parties simultaneously to litigate the same facts and issues in both this court and in the state court where plaintiff has re-filed this entire action.<sup>1</sup>

**IT IS THEREFORE ORDERED** that defendants' joint Motion to Alter or Amend Judgment (Doc. 303), and defendants' joint Motion to Sever Claims (Doc. 304) are denied.

**IT IS FURTHER ORDERED** that plaintiff's Motion for Leave to File Surreply in Opposition to Defendants' Motions to Alter or Amend Judgment and to Sever Claims (Doc. 308) is denied.

Dated this 30th day of March 2006, at Kansas City, Kansas.

s/ Carlos Murguia  
**CARLOS MURGUIA**  
**United States District Judge**

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<sup>1</sup> The court appreciates defendants' position that it has spent many hours and resources litigating this case in federal court. However, that well-laid foundation will serve to expedite and make more efficient the litigation in the state court case that has been filed.